

Internal Revenue Service
memorandum

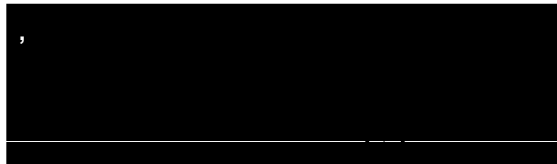
date: FEB 11 1991

to: Director, Internal Revenue Service Center
Kansas City, MO
Attn: Entity Control

from: Technical Assistant
Employee Benefits and Exempt Organizations

subject: CC:EE:3 - TR-45-1654-90
Railroad Retirement Tax Act Status

Attached for your information and appropriate action is a copy of a letter dated December 18, 1990, from the Railroad Retirement Board concerning the status under the Railroad Retirement Act and the Railroad Unemployment Tax Act of the:



We have reviewed the opinion of the Railroad Retirement Board and, based solely upon the information submitted, concur in the conclusion reached by the Board that [REDACTED] is not an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

(Signed) Ronald L. Moore

RONALD L. MOORE

Attachment: Copy of letter from
the Railroad Retirement Board

cc: Mr. Gary Kuper
Internal Revenue Service
200 South Hanley
Clayton, MO 63105

08616

UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 RUSH STREET
CHICAGO, ILLINOIS 60611

BUREAU OF LAW

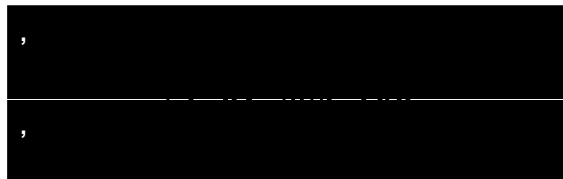
Assistant Chief Counsel
(Employee Benefits and
Exempt Organizations)
Internal Revenue Service
1111 Constitution Avenue., N.W.
Washington, D.C. 20224

DEC 18 1990

Attention: CC:IND:1:3

Dear Sir:

In accordance with the coordination procedure established between the Internal Revenue Service and this Board, I am enclosing for your information a copy of an opinion in which I have expressed my determination as to the status under the Railroad Retirement and Railroad Unemployment Insurance Acts of the following:



Sincerely yours,

A handwritten signature in cursive script, reading "Steven A. Bartholow".

Steven A. Bartholow
Deputy General Counsel

Enclosure

UNITED STATES GOVERNMENT

RAILROAD RETIREMENT BOARD

MEMORANDUM

DEC 18 1990

TO: Director of Research and Employment Accounts

FROM: Deputy General Counsel

SUBJECT: [REDACTED]
Employer Status

This is in reply to your Form G-215 dated August 29, 1990, requesting my opinion regarding the employer status of [REDACTED]. This company has not previously been held to be an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

In an Interstate Commerce Commission decision of [REDACTED] Finance Docket Numbers [REDACTED] and [REDACTED], [REDACTED] is referred to as "a newly formed entity created for the purpose of engaging in transportation-related activities." See Legal Opinion [REDACTED], which held that [REDACTED], a wholly-owned subsidiary of [REDACTED] which owns track used by the [REDACTED], should not be considered to be an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts until such time as it begins operations. No evidence that [REDACTED] has begun operations has come to the attention of this agency.

In correspondence submitted with your inquiry and in discussions with my staff, counsel for [REDACTED] advises that [REDACTED] performs no services for [REDACTED] or any other railroad company and that "[REDACTED]'s function is to search for railroads to purchase, and to negotiate such purchases." She advises that [REDACTED] does not and has not owned any railroads other than [REDACTED] and there is no intention to own any; she stated that [REDACTED] has no operational connection with and performs no management function for any railroad; its sole function is to search for railroads for purchase, apparently by other companies (counsel advises that [REDACTED] is currently engaging in the purchase of a railroad).

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231 (a)(1)) provides in pertinent part as follows:

Director of Research and Employment Accounts

"The term "employer" shall include--

(i) any express company, sleeping-car company, and carrier by railroad, subject to part I of the Interstate Commerce Act;

(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad
* * *."

A similar provision is contained in section 1(a) of the Railroad Unemployment Insurance Act (45 U.S.C. § 351(a)).

Legal Opinion [REDACTED] concerned a company, [REDACTED], which "owns several employers under the Acts and therefore is clearly under 'common control' with them." [REDACTED]'s activities consisted of the following:

"* * * the election of the directors of its subsidiaries. Other activities engaged in by [REDACTED] through its employees consist of the evaluation of other acquisition opportunities for [REDACTED] and the planning of methods by which [certain railroads] might coordinate their policies in the event that [REDACTED] receives permission to exercise control over all three carriers. [REDACTED] intends to limit its activity to the kind of policy direction common to holding companies, and does not anticipate direct involvement in operational considerations at the railroads."

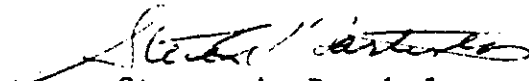
That opinion held that performance of the above-described activities does not constitute performance of service in connection with the transportation of passengers or property by rail. See also Legal Opinion [REDACTED].

From the information available, it appears that [REDACTED] would have even less involvement with any railroads it might acquire than does [REDACTED] with the railroads it owns.

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Based on the foregoing, while it does not appear that [REDACTED] is at this time under common control with one or more employers, there is also no evidence that [REDACTED] operates any equipment or facility or performs any service in connection with the transportation of passengers or property by railroad. There is consequently no basis to hold [REDACTED] to be an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. If [REDACTED] does in fact acquire or come under common control with an operating railroad, further inquiry should be made as to whether it provides any management or direction over such operations and the matter should be resubmitted to this bureau for further consideration.

A Form G-215 giving effect to the foregoing is attached.


Steven A. Bartholow

Attachment